

1 MS. FARHAT: Thank you, Your Honor.

2 (Off the record at 11:50 a.m. Back on the record at
3 12:00 p.m.)

4 JUDGE LUTON: Let's proceed. Next witness.

5 MS. FARHAT: Yes. Your Honor, at this time I would
6 like to have Mr. Adelman, Michael J. Adelman approach the
7 witness stand.

8 Whereupon,

9 MICHAEL J. ADELMAN

10 having been first duly sworn, was called as a witness herein
11 and was examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MS. FARHAT:

14 Q Good afternoon, Mr. Adelman.

15 A Good afternoon.

16 Q Do you have in front of you what's been identified
17 as Petroleum V. Nasby Exhibit No. 3?

18 A Yes, I do.

19 Q Have you reviewed this exhibit?

20 A Yes, I have.

21 Q Are there any changes which you wish to make to this
22 exhibit?

23 A No, there's not.

24 MS. FARHAT: Your Honor, I would point out one
25 thing. That, that page 3, paragraph 4, the first line, the

1 | copies of this exhibit that had previously been distributed to
2 | you and Ms. Laden indicate a date of June 1991. And, and I
3 | believe that should be June 1981. The original and one copy
4 | that I provided to the, the court reporter has that
5 | correction. And I believe subject to checking with Mr.
6 | Adelman that that's a correct date, June of 1981.

7 | BY MS. FARHAT:

8 | Q Is that correct, Mr. Adelman?

9 | A That's correct.

10 | Q With that change, are there any other changes?

11 | A No.

12 | MS. FARHAT: At this time, Your Honor, I move the
13 | Exhibit No. 3 into evidence.

14 | JUDGE LUTON: All right. Three is offered.
15 | Objections to 3.

16 | MS. LADEN: Yes, Your Honor. Paragraph 2 I believe
17 | is irrelevant.

18 | JUDGE LUTON: All right. I will overrule that
19 | objection on the same basis that I overruled the others,
20 | others like it mainly to the extent that it -- well, it will
21 | be admitted only as providing some more specific
22 | identification of the witness. Who he is, where he's been and
23 | biographical background material.

24 | MS. FARHAT: Your Honor, may I note that --

25 | JUDGE LUTON: This seems to go somewhat beyond that,

1 | however, as I look at it. But it's okay. I'm going to --
2 | that's the ruling I'm going to make. Yes, what about 2?

3 | MS. FARHAT: I was just going to say, Your Honor,
4 | there was a portion of that that I thought related to the
5 | management of the station. But that's fine.

6 | JUDGE LUTON: It's okay. I'm going to go with that
7 | ruling. Other objections.

8 | MS. LADEN: Your Honor, paragraph 3 has this
9 | question of civic activity --

10 | JUDGE LUTON: And that's irrelevant. I'm -- that's
11 | even more irrelevant than the material that I just left in.
12 | I'm going to grant the objection and strike 3.

13 | MS. LADEN: Paragraph 4.

14 | JUDGE LUTON: On the basis of relevancy?

15 | MS. LADEN: Yes, Your Honor. On the basis of the,
16 | that the participation, the who manages or controls the
17 | station is irrelevant.

18 | JUDGE LUTON: Just as -- well, certainly this
19 | witness is at a station to the significant time and energy
20 | spent by somebody else in doing these things. And the claim
21 | that somebody else literally built the station, all of these
22 | opinions, they seem to me to be really quite irrelevant. I'm
23 | not sure they say anything that Mr. Williamson himself hasn't
24 | said in his own, own testimony. What do you call that,
25 | hearsay? Duplicative?

1 MS. FARHAT: That's -- Your Honor, may I address
2 this?

3 JUDGE LUTON: It's unnecessary certainly. I'm going
4 to strike 4 in its entirety.

5 MS. FARHAT: Your Honor, may I make, make a
6 statement for the record?

7 JUDGE LUTON: Go ahead.

8 MS. FARHAT: Your Honor, it may be duplicative. But
9 at the same time I view it as corroboration of something that
10 the Bureau I, I don't believe is disputing as they've deemed
11 it to be irrelevant. But I thought it would be useful to have
12 information provided by someone who's been an employee of the
13 station since June of 1981. And for that purpose it was more
14 corroborative in my mind than just, than this.

15 JUDGE LUTON: I'm not sure that it is anything that
16 needs to be corroborated. There was a question in my mind
17 certainly about the extent to which Mr. Williamson's testimony
18 had the same effect as all this is going to count in this
19 case. I don't know. And difficult for me to see that
20 supposed corroboration is going to add anything to the case.
21 I'm going to go with my ruling and strike the paragraph.

22 Other objections starting at paragraph 5?

23 MS. LADEN: Your Honor, I object to paragraph 5.
24 It's our position that the degree of contact or -- is
25 irrelevant.

1 JUDGE LUTON: Okay. It may be, but for purposes of
2 admissibility I'm going to permit it until I've had an
3 opportunity to read the cases. Not until but I'm going to
4 admit it and see what I'll do with it on the basis of what the
5 cases and the parties instruct in that regard. Objection is
6 overruled.

7 Six, adverse affect, effect on loss of station and
8 community. Obvious relevancy problems here to me. The Bureau
9 have those same problems?

10 MS. LADEN: Yes, Your Honor, we object.

11 JUDGE LUTON: WSWR, terrific station. Its loss
12 would be a pity. Arbitrary and position of Root on related
13 convictions. Oh, boy. I'm not going to go through all of my
14 problems with that. I'm simply going to grant the Bureau's
15 objection as well as my own and strike 6 in its entirety. I
16 don't think there's a single piece of evidence in there.

17 All right. Now we've got -- I'm going to receive 3
18 in its present form and presume that the witness is available
19 for cross and permit cross to begin.

20 (Whereupon, the document referred to
21 as Petroleum V. Nasby Exhibit No. 3
22 was received into evidence.)

23 MS. LADEN: Your Honor, did you strike paragraph
24 6 --

25 JUDGE LUTON: I did.

1 MS. LADEN: Okay. Your Honor --

2 JUDGE LUTON: I intended to. If I didn't, paragraph
3 6 is stricken in its entirety.

4 MS. LADEN: Okay. I, I have no questions --

5 JUDGE LUTON: No questions to the witness. All
6 right. There being no cross, there will be no redirect. Mr.
7 Adelman, you are excused. Thank you very much.

8 WITNESS: Thank you, Your Honor.

9 JUDGE LUTON: I guess they don't want to talk to you
10 today. That's all right.

11 We have one additional evidentiary offering and that
12 is Mrs. Root's testimony. I understand that the Bureau has
13 some objections to the offering even though it has no desire
14 to cross-examine Mrs. Root. Let's get to that one. That
15 would be Nasby 4 for identification.

16 MS. FARHAT: Yes, Your Honor. At this time, Your
17 Honor, I move for the admission of Petroleum V. Nasby Exhibit
18 No. 4, testimony of Kathy G. Root.

19 MS. LADEN: Your Honor, I have an objection.

20 JUDGE LUTON: Okay.

21 MS. LADEN: At the bottom of paragraph 3 on page 2,
22 Mrs. Root uses the word consequently. I -- that -- the
23 word -- I object to just the word consequently. It, it
24 assumes that the reason that Mr. Root did not discuss -- it
25 assumes a reason that Mr. Root did not discuss the filing of

1 the application.

2 JUDGE LUTON: Okay. Let me read this for myself
3 here.

4 (Pause.)

5 JUDGE LUTON: You say that it, it assumes a reason
6 for Root having done something?

7 MS. LADEN: That's right. The, the sentence -- it's
8 fine for Mrs. Root to say why she never discussed the
9 potential need for filing with Mr. Root. But she also states
10 that he did not discuss it with her. And consequently
11 presupposes that the reason, a reason that he didn't discuss
12 it with her.

13 JUDGE LUTON: Oh, I see. It's the, the last one,
14 two, three, four words on that sentence that causes the Bureau
15 problems. I --

16 MS. LADEN: That's correct.

17 JUDGE LUTON: -- "I never discussed with Mr. Root
18 the filing of an application -- my husband." Now that can
19 properly be a consequently. Because she's stating reasons why
20 she didn't. And she ought to know why she didn't do a
21 particular thing.

22 But for her to say as the sentence as presently
23 constructed appears to say the reason that Mr. Root didn't
24 discuss the matter was also because blah, blah, blah. I see
25 the difficulty with the sentence. You, you don't -- okay.

1 MS. FARHAT: I, I have no objection to striking
2 those last words.

3 JUDGE LUTON: All right. Well, let's try to get it
4 straight here.

5 MS. LADEN: Your Honor --

6 JUDGE LUTON: In my mind I knew -- I'm sorry.

7 MS. LADEN: I -- Ms. Farhat said she, she had no
8 objection to removing those last four words. I have no
9 objection to the last four words. My objection is to the word
10 consequently.

11 JUDGE LUTON: Well, consequently -- then I'm lost on
12 the Bureau's objection. Consequently meaning that what I
13 stated heretofore is the reason for what I'm about to say now.
14 "I never discussed the potential need for filing my
15 application with the FCC with my husband." Period. But when
16 the sentence goes on to say, "-- nor he with me," it assumes
17 that the reason her husband never discussed the potential need
18 for filing the application with the --

19 MS. LADEN: That's --

20 JUDGE LUTON: -- discuss it with her is because of a
21 reason which she has stated earlier.

22 MS. LADEN: You're absolutely correct, Your Honor.

23 JUDGE LUTON: Isn't it right that the four, the last
24 four words are the ones that cause the difficulty?

25 MS. LADEN: That's -- you're exactly right, Your

1 Honor.

2 JUDGE LUTON: That's what I thought. Still don't
3 understand it?

4 MS. FARHAT: No, I understand it. I --

5 JUDGE LUTON: Okay, I understand it too. You
6 don't --

7 MS. FARHAT: Okay.

8 JUDGE LUTON: -- understand it. What I'm going to
9 do is put a period here before we get to those last four
10 words. Husband period. And strike "nor he with me." The
11 reason being that the witness is incapable of testifying about
12 what motivated Root. Is that right? I think so. Nobody
13 likes that. But anyhow, that objection is sustained, and the
14 last four words are stricken from that sentence so that the
15 sentence reads, "Consequently I never discussed the potential
16 need for filing an application with the FCC with my husband"
17 period. Other objections?

18 MS. LADEN: I have no further objections.

19 JUDGE LUTON: Okay. There being no further
20 objections, 4 is received. And I believe that completes
21 Nasby's direct case.

22 (Whereupon, the document referred to
23 as Petroleum V. Nasby Exhibit No. 4
24 was received into evidence.)

25 JUDGE LUTON: I believe that completes --

1 MS. FARHAT: I was making sure that the Exhibit No.
2 5 had been received, and I think it has been.

3 JUDGE LUTON: I don't -- yeah, that's the amendment,
4 right?

5 MS. FARHAT: Right.

6 JUDGE LUTON: Yeah, right. That was received.
7 Yeah. Some while ago.

8 It is appropriate now to close the record.
9 Consequently the record is closed. I'm going to ask the
10 parties to file proposed findings of fact and conclusions of
11 law in which they'll have an opportunity to address their
12 differing views about the case in its entirety and certainly
13 about whether or not the authorities cited by the Bureau as
14 well as any other authority that can be found by either party
15 permit I won't call it atomization.

16 But in a case such as this of which there haven't
17 been too many, I realize a distinction be made between the
18 licensee and a miscreant stockholder. One about whom his
19 conduct is settled. About as settled as it can be.

20 The Bureau stated its position to be that it makes
21 no difference in this case whether Root had involvement in
22 running the station or not. In mitigation Nasby is attempting
23 to show the station ought to be entitled to something by way
24 of mitigation because Mr. Root was a very minor player, a
25 marginal player, a non-player or something like that. I don't

1 know the answer to that, to the two sides. But I'm going to
2 have to make a decision on it.

3 What I've tried to do here today is proceed in a way
4 which made sense to me until I get a chance to read the cases.
5 Then I may come away confused or with total nonsense. But
6 we'll see.

7 If the parties care to suggest dates for the filing
8 of findings, I'd be happy to accept those dates. Go off the
9 record while you consider it.

10 (Off the record at 12:15 p.m. Back on the record at
11 12:20 p.m.)

12 JUDGE LUTON: Once again, the record is closed. The
13 parties are requested to submit proposed findings of fact and
14 conclusions of law by February 22, 1994 and reply proposed
15 findings by March 8.

16 Anything else left for us to do here? I don't think
17 so. Thank you very much. We'll be in recess.

18 (Whereupon, at 12:21 p.m., the hearing was
19 adjourned.)
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CERTIFICATE OF REPORTER, TRANSCRIBER, AND PROOFREADER

IN THE MATTER OF PETROLEUM V. NASBY CORPORATION

Name

MM DOCKET NO. 93-135

Docket No.

WASHINGTON, D.C.

Place

DECEMBER 14, 1993

Date

We, the undersigned, do hereby certify that the foregoing pages, numbers 14 through 98, inclusive, are the true, accurate and complete transcript prepared from the reporting by BARBARA J. LORD in attendance at the above identified proceeding, in accordance with applicable provisions of the current Federal Communications Commission's professional verbatim reporting and transcription Statement of Work and have verified the accuracy of the transcript by (1) comparing the typewritten transcript against the reporting or recording accomplished at the proceeding and (2) comparing the final proofed typewritten transcript against the reporting or recording accomplished at the proceeding.

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